



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUL 21 2014

Dennis Rehberg  
4401 US Highway 3  
Billings, MT 59106

RE: MUR 6674

Dear Congressman Rehberg:

On November 1, 2012, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On July 17, 2014, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe you violated the Act or Commission regulations. Accordingly, the Commission closed its file in this matter on July 17, 2014.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

General Counsel

*Jeff S. Jordan / JS*

BY: Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination and  
Legal Administration

Enclosure  
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Montanans for Rehberg  
and Lorna Kuney as treasurer  
Dennis Rehberg  
Ted P. Beck  
Vicki E. Beck

MUR 6674

I. INTRODUCTION

This matter was generated by a Complaint filed by Preston Elliot ("Elliot") alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by Respondents Montanans for Rehberg and Lorna Kuney in her official capacity as treasurer (collectively the "Committee"), Ted P. Beck and Vicki E. Beck (collectively the "Becks") and Dennis Rehberg ("Rehberg"). After reviewing the record, the Commission dismissed the allegation as to the Committee and the Becks and found no reason to believe that Rehberg violated the Act or Commission regulations.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Elliot, on behalf of Montanans for Tester (collectively "Complainants"), filed a Complaint alleging that the Committee accepted excessive in-kind contributions in violation of the Act. Compl. at 1. The Complaint states that in September 2012 the Rehberg campaign conducted a campaign tour in Montana using a "1999 Prevost Entertainer luxury bus" owned by Rehberg supporter Ted Beck. *Id.* at 2. In an interview broadcast by Yellowstone Public Radio ("YPR") on October 9, 2012, Beck allegedly stated that the Committee did not pay for expenses associated with the bus, including most of the fuel, and that he "provides everything" to the

1 Rehberg campaign.<sup>1</sup> *Id.* In the same interview, a Rehberg spokesperson reportedly “claimed  
2 that this was a misunderstanding” and said that the Committee would pay the fair market value  
3 for the use of the bus and associated expenses, including fuel. *Id.*<sup>2</sup>

4 Nonetheless, the Complaint contends that the Committee’s 2012 October Quarterly  
5 Report, (“October Quarterly Report”), which was filed after the interview, fails to show that the  
6 Becks’ in-kind contributions were consistent with prevailing market rates for bus services.  
7 Compl. at 2. The Committee’s October Quarterly Report, filed on October 15, 2012, discloses  
8 two in-kind contributions from Ted Beck and Vicki Beck of \$2,440 each for “transportation for  
9 bus tour.” See October Quarterly Report at 52 on Schedule A (Itemized Receipts) and at 1203 on  
10 Schedule B (Itemized Disbursements).<sup>3</sup> However, based on information apparently obtained  
11 from an entity called “USA Bus Charter,”<sup>4</sup> the Complaint asserts that “this model of luxury bus”  
12 rents for \$2,000 per day, for a total fair market value of \$14,000 for seven days. *Id.* at 2-4. The  
13 Complaint also estimates that the cost of fuel for the bus during the September campaign tour  
14 exceeded \$2,300, for a total cost of at least \$16,300 for the Rehberg bus tour during the month of  
15 September. *Id.*<sup>5</sup> Noting that the Committee’s October Quarterly Report discloses no payments  
16 for the use of the bus aside from the Becks’ in-kind contributions, the Complaint claims that the

<sup>1</sup> The Complaint states that the interview is available at the following link: <http://ypr-pc.streamguys.net/podcast/news/12/10/09bus.mp3>. *Id.* at 2.

<sup>2</sup> The Complaint estimates that the campaign bus tour lasted for at least seven days and covered more than 3,700 miles statewide. *Id.*

<sup>3</sup> Itemized in-kind contributions must be reported as both itemized contributions and itemized expenditures on the same report. See 11 C.F.R. §§ 104.13(a)(1) and (2); see also A.O. 2004-36 at 2-3.

<sup>4</sup> The Complaint does not include source documents or other information in support of its “fair market value” calculations.

<sup>5</sup> The Complaint states the Rehberg bus tour continued in October and that the cost estimates provided are limited to the September bus tour.

1 “fair market value for the use of the bus and the associated expenses” were well above Ted and  
2 Vicki Beck’s separate contribution limits of \$2,500 per election.<sup>6</sup> *Id.* at 4. Therefore, the  
3 Complaint concludes that the Committee accepted excessive in-kind contributions from the  
4 Becks in violation of the Act. *Id.* at 4-5.

5 Jacob Eaton (“Eaton”), who filed a Response on behalf of the Committee, states that the  
6 Complaint’s claims are “baseless and false” and asserts that the Committee contacted two  
7 Montana-based bus rental agencies in order to determine the “appropriate fair market value” for  
8 the Rehberg campaign’s use of the bus. Eaton Resp. The Committee obtained quotes ranging  
9 from \$850 to \$900 per day, which included the costs of fuel, estimated at “approximately \$400,”<sup>7</sup>  
10 and the services of a driver, estimated at \$120 - \$150 per day. *Id.* Explaining that the  
11 Committee purchased the fuel and that Beck volunteered to drive the bus, Eaton calculates that  
12 the fair market value of the “actual bus usage” was approximately \$330 - \$350 per day,<sup>8</sup> but  
13 states that the Committee chose to value the cost of renting the bus at a higher amount, or \$365  
14 per day. *Id.*<sup>9</sup>

15 Eaton states that the Rehberg campaign used the bus for thirteen days during the time  
16 period covered by its October Quarterly Report, for a total cost of \$4,745. Eaton Resp.; *see also*  
17 Schedule A (document entitled “Bus Usage” lists dates on which bus was allegedly used by the

<sup>6</sup> The Becks also made in-kind contributions of \$60 each for “transportation for bus tour” on November 6, 2012. *See* Committee’s 30-Day Post-General Election Report, filed on December 6, 2012 (“30-Day Post-General Election Report”), at 24-25 on Schedule A (Itemized Receipts) and 442-443 (Itemized Disbursements). Thus, the Becks’ contributions totaled \$2,500 apiece.

<sup>7</sup> Eaton does not state whether the \$400 for fuel represents the daily cost of fuel for the bus or the cost of re-fueling the bus as needed.

<sup>8</sup> It appears that Eaton derived the \$330 figure by subtracting \$400 for fuel and \$120 for a bus driver, or \$520, from \$850. It also appears that Eaton derived the \$350 figure by subtracting \$400 for fuel and \$150 for a bus driver, or \$550, from \$900.

<sup>9</sup> Eaton does not include source documents or other information to support his calculations.

1 Rehberg campaign).<sup>10</sup> The Committee reflected this cost, plus \$135 in “incidental expenses”  
2 incurred by Beck, as two \$2,440 contributions from Ted and Vicki Beck. Eaton Resp.  
3 Additionally, Eaton states that the Rehberg campaign continued to use the bus in October, for  
4 which the campaign reimbursed Beck approximately \$8,510. *Id.* Committee treasurer Lorna  
5 Kuney filed a separate Response affirming the statements made by Eaton.

6 In the Response submitted by Ted and Vicki Beck, they assert that Complainants took the  
7 statements made by Ted Beck during the YPR broadcast “out of context and do not represent the  
8 total conversation that occurred.” Becks Resp. at 1. Mr. Beck states that he purchased the used  
9 bus, which was built in 1999, a few years ago for \$200,000 and that it is presently worth less  
10 than \$150,000. *Id.* They maintain “there is no place in this country” where a bus similar to the  
11 1999 bus can be rented. The Becks suggest that “three luxury cars” could be rented for \$75 to  
12 \$100 apiece per day, which is less than the \$365 per day figure used by the Committee and far  
13 less than the \$2000/day figure set forth in the Complaint. *Id.* at 2. The Becks state that they  
14 invoiced the Committee \$9,185.38 for the use of the bus, which the Committee paid them, and  
15 they offer to provide the Commission with an itemized invoice, as well as documentation as to  
16 the current value of the bus, upon request. *Id.* at 1-2; *see also* Committee’s 30-Day Post-General  
17 Election Report at 442 (\$9,185.38 paid to Ted Beck, with the purpose described as “reimburse  
18 bus expenses”).<sup>11</sup>

19 Rehberg filed a response concerning “Mr. Beck’s offer to make an in-kind contribution of  
20 his personally owed recreational vehicle (RV)” and “to transport other volunteers on door to door

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<sup>10</sup> Upon reviewing the dates set forth in Eaton’s Schedule A, it appears that twelve days are listed, not thirteen.

<sup>11</sup> The Becks request that the Commission “take punitive action” against Complainants for filing what they describe as a “frivolous” complaint. *Id.* at 2.

1 tours." Rehberg Resp. at 1. Rehberg's staff "review[ed] the FEC requirements" to determine  
2 whether his campaign could legally accept Mr. Beck's offer and whether Beck could volunteer  
3 his services as the driver. *Id.* Rehberg states that his staff also contacted local providers to  
4 determine the appropriate rental charge for the bus and allocated a portion of the costs as an in-  
5 kind contribution, with the Committee reimbursing "all additional costs not qualifying for  
6 exemption," such as Beck's volunteering to drive his bus during the campaign tour. *Id.* Rehberg  
7 asserts that fuel and incidental expenses were paid by his campaign. *Id.*

8 According to Rehberg, the "assertion by [Complainants] that a higher price was quoted  
9 by a national charter company for charter service is irrelevant" because Complainants did not  
10 explain whether their price quote was based on the normal and usual rates in Montana, as  
11 opposed to an urban center such as New York City. Rehberg Resp. at 1. Rehberg also states that  
12 Complainants did not describe what "incidental services," if any, were included in the price  
13 quotations set forth in the Complaint. In contrast, Rehberg asserts that Beck, who was not in the  
14 charter service business, provided a vehicle that was approximately thirteen years old and was  
15 capable of carrying only eight to ten passengers, and that Complainants' price quotations were,  
16 therefore, "spurious." *Id.*<sup>12</sup>

<sup>12</sup> Rehberg also states that Complainants posted the Complaint and an accompanying press release on their website and alleges that, by doing so, they violated the Commission's "confidentiality" provisions at 2 U.S.C. § 437g(a)(12) and 11 C.F.R. § 111.21. Rehberg Resp. at 2. The Commission has interpreted its "confidentiality" provisions to allow a complainant to communicate with the press regarding the complaint, provided that the complainant does not disclose information concerning an investigation or any notification of findings by the Commission. See MUR 6243 (Nancy Navarro, *et al.*), n. 1; see also Statement of Reasons, Comm'rs. Hunter, Petersen, and Weintraub, MUR 6656 (Anchin, *et al.*) at 2 ("Complainants often publicly reveal that they have filed a complaint, as well as disclose the contents of that complaint without any threat of adverse action by the Commission"). Therefore, the Commission did not address Mr. Rehberg's contention further.

**B. Legal Analysis**

1           The Act and Commission regulations define “contribution” as any “gift, subscription,  
2           loan . . . or anything of value made by any person for the purpose of influencing any election for  
3           Federal office.” 2 U.S.C. § 431(8)(A)(i); *see also* 11 C.F.R. § 100.52(a). The term “anything of  
4           value” includes in-kind contributions of goods or services without charge, or at less than the  
5           usual and normal charge (*i.e.* “fair market value”). 11 C.F.R. § 100.52(d)(1). The Act limits the  
6           amount any person may contribute to a candidate with respect to any election for Federal office.  
7           2 U.S.C. § 441a(a)(1)(A); *see also* 11 C.F.R. § 110.1(b). A husband and wife each have a  
8           separate contribution limit, even if only one of them has income. 11 C.F.R. § 110.1(i).  
9           “Contribution” does not include “the value of services provided without compensation by any  
10           individual who volunteers on behalf of a candidate or political committee.” 2 U.S.C.  
11           § 431(8)(B)(i); *see also* 11 C.F.R. § 100.74 (the value of services provided by a volunteer is not a  
12           contribution).  
13

14           It is undisputed that Beck volunteered his services to drive the bus; therefore, to the  
15           extent that Complainants’ price estimate of \$2,000 per day includes the services of a driver, their  
16           estimate is potentially inaccurate. The Committee denies the statement reportedly made by  
17           Mr. Beck on the YPR broadcast that he paid all costs associated with the tour. The Committee  
18           also claims that it paid for fuel for the bus, and its financial disclosure reports for the last quarter  
19           of 2012 disclose thousands of dollars in expenditures for fuel, although it is not clear which  
20           expenditures are associated with the bus tour.

21           Neither the Complainants nor the Respondents provide documentation to support the  
22           disparity in their fair market valuations of the rental value of the bus. However, it appears that  
23           the Becks, who were acting in good faith as Rehberg volunteers, accepted the Committee’s

1 valuation. In addition, after the Becks reached their contribution limits of \$2,500 each, the  
2 Committee continued to use the bus and paid Mr. Beck over \$9,000.

3 Therefore, in light of the difficulty of ascertaining the market value of renting a bus  
4 similar to the Becks' bus, coupled with the lack of detail in how the parties arrived at their  
5 valuations for the bus, and in furtherance of Commission priorities, the Commission exercised its  
6 prosecutorial discretion and dismissed the allegations that Montanans for Rehberg and Lorna  
7 Kuney in her official capacity as treasurer accepted excessive in-kind contributions, in violation  
8 of 2 U.S.C. § 441a(f), and that Ted P. Beck and Vicki E. Beck made excessive in-kind  
9 contributions, in violation of 2 U.S.C. § 441a(a)(1)(A). *See Heckler v. Chaney*, 470 U.S. 821  
10 (1985). As to candidate Dennis Rehberg, it does not appear that he was personally involved in  
11 the transaction at issue. Therefore, the Commission found no reason to believe that Rehberg  
12 violated the Act or Commission regulations as to the allegations in this matter.